BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	
THE TELEPHONE CONSUMER PROTECTION ACT OF 1991	)	CC Docket No. 92-90
	)	

JOINT MOTION
FOR DEFERRAL OF EFFECTIVE DATE
OF CERTAIN REQUIREMENTS

The American Financial Services Association, American Resort Development Association, Direct Marketing Association, Direct Selling Association, National Association of Manufacturers, National Association of Realtors, and National Retail Federation (hereinafter "Joint Petitioners") respectfully move that the Commission defer the effective date of certain aspects of its regulations implementing the Telephone Consumer Protection Act ("TCPA"). Those regulations are scheduled to take effect on December 20, 1992. We will show in this motion that, although most of the regulatory program is essentially self-effectuating and should be permitted to go into effect as scheduled, good cause exists for a brief delay in the implementation of Section 64.1200(e)(2). We ask that this provision be deferred for a period of 60 days.

Because the rule is scheduled to take effect in approximately three weeks, we ask for expeditious determination of this Joint Motion. In support, the following is stated:

1. At the outset, it bears emphasis that the Joint Petitioners do not seek a blanket deferral of the regulatory regime adopted by the Commission to implement the TCPA. The effective date of Section 64.1200(a)(1) -- which prohibits the use of an automatic telephone dialing system or an artificial or pre-recorded voice to place any telephone call to an emergency telephone line, the telephone line of any guest room or patient room of a hospital or similar facility, or to any number for which the called party is charged -- should not be delayed. The provisions of Section 68.318(c)(2) dealing with line seizure by automatic telephone dialing systems also should be ordered to go into effect on December 20.[1/] These rules serve public safety goals as well as more generalized consumer interests and are essentially self-executing. Similarly, the requirements of Section 64.1200(a)(2) -- dealing with artificial or pre-recorded voice messages -- and the national calling hour standards embodied by the Commission in Section 64.1200(e)(1) can be put into effect without delay. Although these rules do not involve public safety considerations, compliance by affected businesses, organizations and their agents

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1/ We note that the Electronics Industries Association ("EIA") has requested that the last sentence of Section 68.318(c)(3) be deferred. We take no position on this issue. In any case, it does appear that so much of this subsection of the new rules as is not affected by the EIA petition may be permitted to become effective.

We also note that other petitions for reconsideration are pending and that the relief sought in this Joint Motion will enable the Commission to resolve all outstanding matters before the rules become fully effective.

does not require extensive preparation, the acquisition of specialized equipment or significant rearrangement of existing contractual and business relationships.

2. However, the requirements of Section 64.1200(e)(2) which sets forth the policies and procedures for the maintenance of company-specific, do-not-call lists entails different considerations. This subsection is not self-executing and does not involve fundamental public safety considerations. This rule does require significant investments and changes in established practices by affected entities and alterations in existing contractual and business relationships. A brief -- 60 day -- delay in the effective date of these requirements will enable an overwhelming majority of affected entities to come into full compliance with the new requirements, will thereby avoid needless consumer frustration and annoyance and will best serve the public interest embodied in the TCPA.

3. Commission precedent establishes that requests for delay of the effective date of regulations should be granted where (i) the request itself is reasonable, (ii) the regulations impose substantive (non-trivial) requirements, (iii) compliance will require significant changes in the business practices and contractual relationships of those businesses and entities subject to the new requirements and (iv) delay will not materially alter the rights and expectations of the intended beneficiaries of the newly-enacted rules. See, e.g., Rules and Policies Concerning

Children's Television, (MM Docket 90-570), 6 F.C.C. Rcd. 5093, 5102 (1992); Order in MM Docket 90-570, 6 F.C.C. Rcd. 5529 (1991); compare, In Re Inside Wiring, 5 F.C.C. Rcd. 5228 (1992). We submit that our request satisfies each of these tests.

4. First, on its face, the requested deferral is reasonable: We do not seek delay for some indeterminant period pending the outcome of some uncertain event but only so much additional time as is necessary to assure that the purposes of the TCPA are served.

5. Second, there is no question that these rules are substantive. They impose obligations and requirements upon whole industries of users of the national telecommunications network. It is true that many businesses engaged in telephone marketing already maintain internal do-not-call programs, but the new rules will require a level of formality and rigor that is new; and there are businesses -- especially small ones -- that are confronted for the first time with the need to establish systems and procedures with which they are unfamiliar. In all cases, these industries did not previously consider themselves subject to regulation by the FCC much less as engaging in a type of activity -- marketing and promotion of their goods and services -- that is directly regulated. Efforts have been made and continue to be made through a variety of channels to assure that the business community is informed of the intricacies of the new rules, but affected business nonetheless need time to digest what is required of them and take steps to achieve compliance. This argues in favor of leniency in

determining the period of time that companies should be given to come into compliance.

6. Third, and most importantly, compliance with the do-not-call rule entails that significant and, in some cases, costly measures be taken by marketers. The many businesses and industries affected by the regulations could not begin the compliance process until mid-October when the Commission released its rules. The slightly more than 60 days between issuance of text of the rules and the effective date is simply insufficient to allow affected businesses to alter contractual relationships, install systems and complete training of personnel necessary to assure full compliance with the rules.

7. Several examples serve to illustrate this point. In its Report and Order promulgating the regulations, the Commission has laid down the basic principle that the company or organization "on whose behalf" the telephone solicitation call is made has responsibility for compliance with the rules. For the many businesses that rely upon service agents or service bureaus to carry out their telephone marketing campaigns, this policy necessitates changes in contractual and financial relationships. The process of negotiating, much less concluding, these contractual and financial changes could not begin until the text of the rules were released. The period between October 16 and December 20 is not sufficient for many companies to complete these arrangements.

8. A second major policy determination articulated by the

Commission has to do with the treatment of do-not-call requests in the case of corporate groups: The rules provide that a residential subscriber's do-not-call request will apply to affiliated entities if the consumer so requests or if that result would reasonably be expected given the identification of the caller and the product being advertised; and a single business unit offering multiple products -- e.g., a single corporation selling electronic equipment and wearing apparel -- must honor a do-not-call request without regard to product differentiation.

9. These requirements necessitate very substantial changes in business arrangements by many corporate groups and by multi-product business units. Many businesses and companies already maintain do-not-call lists. However, these lists are typically maintained separately by each division or subsidiary or at each separate location. It is often the case that these divisional, subsidiary or location-specific do-not-call lists are not compatible: Some divisions and some subsidiaries of corporate groups maintain their lists on a manual basis, others maintain their lists electronically; even where divisions, subsidiaries and locations have maintained their lists electronically, software may not be interoperable; and, in many cases, systems of interconnection between the lists maintained by divisions or subsidiaries of a corporate group do not exist.

10. Accordingly, in order to fully satisfy the requirements of the Commission's rules, it is necessary for multi-product

business units and corporate groups to integrate their existing separate (and disparate) do-not-call lists into a single master list so that a true company-wide do-not-call program can be achieved. This is no small undertaking. Where paper and electronic systems exist, it is necessary for affected companies to establish manual-to-electronic interfaces or entirely replace the paper systems. Compatible software must be ordered, tested and made operational. In all cases, communications links between the various subsidiaries (or divisions) and individual business establishments to central do-not-call database must be ordered, tested and made operational. It is physically impossible for many companies -- large and small -- to complete this process before December 20.

11. Another major element of the Commission's do-not-call rules requires that personnel involved in telephone solicitation programs be trained in all aspects of the do-not-call list maintenance program. Especially for companies that conduct telephone marketing from multiple locations throughout the country, it takes time to consistently and effectively train personnel. Moreover, training is almost impossible until integrated, company-wide databases have been put into place. Training cannot be completed in the period between October 16 and the present effective date of the rules.

12. Fourth, a grant of our motion will have no substantial adverse effect upon the intended beneficiaries of the rules --

residential telephone subscribers. It is true that, because of the way the TCPA is structured, deferral of the effective date of these regulations will have the indirect effect of delaying the commencement of the date after which claims of violations of the rules can be advanced by consumers and state law enforcement authorities. See 47 U.S.C. § 227(c)(5), 227(f)(1). Nonetheless, the Commission has the power to defer the effective date of its rules under the TCPA and the Communications Act, of which the TCPA is a part; indeed, it has an affirmative duty to do so in appropriate cases. See, Rules and Policies Concerning Children's Television, 6 F.C.C. Rcd at 5102 (citing U.S. v. Meyer, 808 F.2d 912, 919 (1st Cir., 1987)). Such relief is appropriate in this case because of the hardship that premature implementation will have upon businesses and because a modest extension will cause no cognizable harm to consumers. The TCPA itself provides that private cause of actions do not arise, in any event, unless there has been two or more violations of the rules within the same 12-month period; and, particularly because the informal practice of maintaining do-not-call lists is widespread, the likelihood that a claim would arise during the 60-day period of delay is remote.

13. More importantly, the fundamental purpose of the TCPA and the Commission's rules is not -- or certainly should not be -- to spawn litigation. If the regulatory system put into place works as it should, litigation will be made unnecessary. However, the system can only work as it should if marketers are afforded a

reasonable opportunity to take the substantial steps necessary to assure that their particular do-not-call program fully and completely meet the standards of the Commission's rules. A modest delay in the effective date will thus serve consumer interests.

For these reasons, the Joint Petitioners respectfully maintain that good cause exists to defer the effective date of Section 64.1200(e)(2) of the Commission's rules for a period of 60 days, until February 19, 1993. This additional period of time will enable the broad array of industries and businesses who are subject to these requirements to complete the very substantial, time-consuming and costly process of achieving full compliance with the requirements of the rules and will thereby assure that the basic purposes of the TCPA and the Commission's regulations are achieved.

The Joint Petitioners respectfully request that this motion be acted upon at the earliest possible time.

Respectfully submitted,

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